

Commenting:
Christopher Sawyer
2434 E Cumberland St
Philadelphia, PA 19125

Comment Period: Nov 3 2019
Filed: Oct 15 2019

Re: Public comment to CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON PETITION FOR DECLARATORY RULING OR RETROACTIVE WAIVER FILED BY YODEL TECHNOLOGIES LLC, Proceeding CG 02-278

The present question posed by Yodel Technologies stems from a class action complaint filed against Yodel in *Person et. al. v. Lyft. Inc et. al.* (2019). At (34) the plaintiffs state the following about the use of Yodel's technology:

The predictive dialer uses an algorithm by which the predictive dialer dials thousands of numbers at a rapid rate, and only transfers the call to a "soundboard" agent once a human being is on the line.

As a result, the called party must wait for the soundboard agent to come on to the line, shifting the burden of wasted time to the call recipients.

Once on the line, the soundboard agent plays several prerecorded messages that telemarket Lyft's services and, after playing those prerecorded messages, transfers the call to a live representative at Lyft.

Yodel's technology was used against the plaintiff no less than thirteen times over the course of March 26 2019 through June 14 of this year, all on behalf of Lyft.

Yodel's technology is specifically designed to use pre-recorded messages assembled in such a way as to illicit a telephone subscriber to give verbal cues and responses. Essentially it is to prompt the user to answer preliminary questions as a form of filtering telemarketing calls in search of profitable leads.

Most of the public would not take issue at this technology if its sole purpose was for a business to deploy it to pre-screen inbound calls. But that is not where Yodel's technology is intended to be deployed. In the ongoing *Person* case, Yodel was used expressly for the purpose of unsolicited telemarketing. This is the type of unsolicited harassment by telephone that Congress expressly prohibited when the TCPA was passed.

The business model that Yodel's technology is suited for and has a profitable prospect in the marketplace is only within outbound telemarketing and telesales, which is an activity that is tightly controlled by the FCC.

Yodel's petition is limited and seeks FCC guidance specifically for outbound telephone calls, and it is solely based in offering itself as a provider in the automated dialing industry.

What if FCC ruled that Yodel's technology is not a pre-recorded call?

Most consumers already have experience with electronic soundboard avatars posing as live agents during outbound automated dialing campaigns. Brokers using the technology on behalf of law enforcement charities have delivered millions of automated telephone calls using technology similar to or actually from Yodel.

These feature brusque voices designed to fool callers into believing they are speaking to a male law enforcement officer collecting donations for a police drive, gather information and then transfer the called party when the questions to the avatar indicate to its software that the called party is likely to pay or surrender information.

A ruling deeming that recorded messages and hand-off to a live agent or an avatar-based response program speaking to a consumer would contradict prior TCPA rulings if the use of this technology provides an exception of prior interpretation of the TCPA that expressly forbids automated telesales calls to consumers.

Even if there is no human component at the beginning of the telephone call, the automated dialing campaign by an exempt organization would not be violative.

Going further, an allowed activity such as a debt collector contacting a consumer that has an existing contractual relationship theoretically would not be violative if the beginning of the call to a consumer to collect a debt is made by an avatar. However, if the avatar is solely used to dramatically increase the rate the consumer is called to the level of "robo-harassment", where Yodel expects to dial the same consumer multiple times in an hour to harass a telephone subscriber this would likely prompt a new round of refinement of the TCPA by Congress if the FCC cannot reach a reasonable opinion here.

How does Yodel respond to consumers that it calls, or that its clients have connected to its software in a conference call, to stop calling?

If the consumer verbally responds over the telephone that the campaign is harassment and a consumer does not have a way to convince the avatar that it must stop calling the consumer, how will Yodel or its technology comply with a consumer's request?

How will Yodel's technology respect the rights of telephone consumers and comply?

The Petitioner is silent on this issue.

Yodel's technology should not be permitted magnify the present harm to subscribers.

The FCC must take care to issue a ruling that does not open a window through which present prohibited activity would be legalized.

The use of Yodel's technology is expressly intended to further computerized automation of outgoing telephone calls intended to target subscribers.

Further, the FCC should take care not to create new harm that would permit avatar-based calls it deems non-violative to turn into "robo-harassment", because rulemaking did not set an effective limit on how frequently such permitted automated dialing may occur.

Respectfully submitted.